

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX

In The Matter of:	)	
	)	
	)	ADMINISTRATIVE CONSENT ORDER
Jasco Chemical Superfund Site	)	FOR PAST AND FUTURE
Mountain View, California	)	RESPONSE COSTS
	)	
JASCO Chemical Corporation;	)	U.S. EPA Region IX
Harry M. Anthony; and	)	CERCLA Docket No. 2000-11
Carol Jean Anthony,	)	
	)	PROCEEDING UNDER SECTION 122(h) (1)
Respondents.	)	OF CERCLA, 42 U.S.C. § 9622(h) (1)
	)	

This Order is issued by the United States Environmental Protection Agency ("EPA") and is agreed to by JASCO Chemical Corporation, Harry M. Anthony, and Carol Jean Anthony ("Respondents"). The purpose of this Order is for EPA to recover response costs incurred and response costs to be incurred by the United States at or in connection with the Jasco Chemical Superfund Site ("Site") in Mountain View, California, and to resolve the liability of the Respondents for such response costs.

EPA is authorized to enter into this Order pursuant to the authority vested in the Administrator of the EPA by Section 122(h) (1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §6922(h) (1), which authority has been delegated to the EPA Regional Administrators, and redelegated to the Branch Chief, Superfund Division, EPA Region IX.

WHEREAS, EPA alleges that hazardous substances as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at the Site and that such hazardous substances have been or are threatened to be released into the environment from the Site;

WHEREAS, EPA alleges that the Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

WHEREAS, EPA alleges that such releases or threatened releases required response action to be undertaken at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and will require further response action to be undertaken in the future;

WHEREAS, EPA and Respondents have completed response activities at the Site and will conduct future response activities at the Site pursuant to Unilateral Administrative Order, U.S. EPA Docket No. 93-02 (03 Dec 1992);

WHEREAS, Respondents have reimbursed EPA annually pursuant to Unilateral Administrative Order, U.S. EPA Docket No. 93-02, for response costs incurred at or in connection with the Site through 30 September 1999;

WHEREAS, EPA alleges that in performing this response action, it has incurred response costs at or in connection with the Site totaling \$ 5,862.60 as of 31 March 2000, and that further response costs will be incurred in the future;

WHEREAS, EPA alleges that each Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and each is jointly and severally liable for response costs incurred and to be incurred at or in connection with the Site;

WHEREAS, EPA and Respondents desire to settle certain claims arising from Respondents' alleged involvement with the Site without litigation and without the admission or adjudication of any issue of fact or law;

WHEREAS, the Regional Administrator of EPA Region IX, or her delegatee, has determined that this administrative settlement does not compromise a claim for past or future response costs;

NOW, THEREFORE, in consideration of the promises herein, and intending to be legally bound hereby, it is ordered and agreed as follows:

1. This Order shall be binding upon EPA and shall be binding upon each Respondent and Respondents' heirs, successors and assigns. Any change in ownership or corporate or other legal status of a Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondent's responsibilities under this Order.

2. Each signatory to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to bind legally the party represented by him or

her. Each Respondent agrees to undertake all actions required by this Order. Each Respondent consents to the issuance of this Order and will not contest EPA's authority to enter into this Order or to implement or enforce its terms.

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.;

b. "Order" shall mean this Order and any attached appendices. In the event of conflict between this Order and any appendix, the Order shall control;

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States;

e. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA incurs at or in connection with the Site after 31 March 2000, plus accrued interest on all such costs;

f. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a);<sup>1</sup>

g. "Paragraph" shall mean a portion of this Order identified by an arabic numeral or a lower case letter;

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<sup>1</sup> The Superfund currently is invested in 52-week MK bills. The interest rate for these MK bills changes on October 1 of each year.

h. "Parties" shall mean EPA and Respondents;

i. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has incurred at or in connection with the Site through 31 March 2000, plus accrued Interest on all such costs through such date;

j. "Respondents" shall mean JASCO Chemical Corporation, Harry M. Anthony, and Carol Jean Anthony;

k. "Site" shall mean the Jasco Chemical Superfund Site, located in Mountain View, California;

l. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

4. Within ten (10) days of the effective date of this Order, Respondents shall pay to the EPA Hazardous Substance Superfund \$ 5,862.60.

5. Respondents agree to pay the United States' Future Response Costs incurred at or in connection with the Site, including response costs incurred from and after 31 March 2000. EPA shall provide a cost summary of its response costs annually to Respondents. Respondents reserve the right to demonstrate that EPA's cost summary contains accounting errors. Any such disputed costs shall be resolved in accordance with the dispute resolution provision contained in Paragraph 17 of this Order. Respondents shall reimburse EPA for all undisputed response costs within thirty (30) days from receipt of EPA's cost summary, in accordance with the procedures set forth in Paragraphs 6 and 7 of this Order.

6. Payments shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the name and address of each Respondent, the Site name, the EPA Region and Site number (09F6), and EPA CERCLA Docket No. 2000-11, and shall be sent by Respondents to:

Catherine Shen  
EPA Region IX  
ATTN: Superfund Accounting  
P.O. Box 360863M  
Pittsburgh, PA 15251

7. At the time of payment, Respondents shall send a copy of the check to:

Ellen Manges  
Mail Code SFD-7-2  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

8. In the event that any payment required by paragraphs 4 and 5 is not made when due, Interest shall accrue on the unpaid balance from the date of receipt of EPA's cost summary until the date of receipt of the payment.

9. If any amounts due to EPA under paragraphs 4 and 5 are not paid by the required date, Respondents shall pay to EPA, as a stipulated penalty, in addition to the Interest required by paragraph 8, \$500 per violation per day that such payment is late.

10. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties. All payments to EPA under this paragraph shall be identified as "stipulated penalties" and shall be made in accordance with paragraphs 6 - 7.

11. Penalties shall accrue as provided above regardless of whether EPA has notified the Respondents of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due, or the day a violation occurs, and shall continue to accrue through the final day payment is received. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

12. Notwithstanding any other provision of this Order, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Order.

13. In addition to the Interest and Stipulated Penalty payments required by this Order and any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Order shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3), and to civil penalties pursuant to Sections 122(l) and 109 of CERCLA, 42 U.S.C. §§ 9622(l) and 9609. If the United States, on behalf of EPA, brings an action to enforce this Order, Respondent shall reimburse the United

States for all costs of such action, including but not limited to costs of attorney time.

14. Respondents may submit their payments by one or more checks, but they are jointly and severally liable for payment of all amounts due under this Order. In the event of the failure of any one or more Respondent to make the payments required under this Order, the remaining Respondents shall be responsible for such payments.

15. Subject to Paragraph 19 of this Order, upon payment of the amount specified in Paragraph 4 of this Order, EPA agrees that the Respondent shall have resolved any and all civil liability to EPA under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for reimbursement of EPA Past Response Costs incurred at or in connection with the Site as of 31 March 2000. The Respondents shall resolve any and all civil liability to EPA under Section 107(a) of CERCLA for reimbursement of Future Response Costs upon payment by the Respondents under Paragraph 5 above.

16. A cost shall be deemed to have been "incurred" for purposes of Paragraphs 5 and 15 as of the date it is paid by EPA, or, if applicable, as of the date it is paid by the agency or entity administering CERCLA funds granted by EPA. If a cost was paid prior to 31 March 2000 but was not yet recorded against the relevant site-specific account number in EPA's accounting system, or, if applicable, in the grantee agency's or entity's accounting system, as of the effective date of this Order, the cost shall not be considered to have been incurred as of 31 March 2000, the cutoff date set forth in Paragraphs 5 and 11, and shall be deemed to be a Future Response Cost which Respondents shall reimburse in accordance with Paragraph 5.

17. Any disputes concerning the United States' Future Response Costs shall be resolved in the following manner:

a. Within thirty (30) days from receipt of EPA's annual cost summary, Respondents shall notify the EPA program contact listed in Paragraph 7 of its objections to EPA's costs. Respondents' objections shall be made in writing and shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested. All costs not disputed shall be paid pursuant to Paragraph 5 of this Order. EPA and the Respondents shall have fourteen (14) days from the date of EPA's receipt of Respondents' objections to reach agreement on the disputed costs. EPA may extend this period as needed to provide substantiation of its costs. If an agreement

is reached, Respondents shall pay the agreed amount within fourteen (14) days after the date of such agreement.

b. If an agreement is not reached within said time period including extensions, Respondents may request a determination by EPA's Superfund Division Director. The Superfund Division Director's determination shall constitute EPA's final decision. Respondents shall pay the costs owed pursuant to EPA's final decision, regardless of whether Respondents agree with the decision, within fourteen (14) days after the date of said decision. Respondents' payment shall include interest on the amount due, calculated from the date of Respondents' receipt of EPA's annual cost summary to the date of payment, at the rate established by the Department of Treasury under 31 U.S.C. § 3717 and 4 C.F.R. § 102.13.

c. If Respondents fail to make payment when due under this Paragraph, Respondents shall pay a Stipulated Penalty. Stipulated Penalties shall be calculated and payments made in accordance with paragraphs 9 - 11 of this Order. EPA reserves the right to seek statutory penalties and/or any other appropriate relief.

18. Except as specifically provided in paragraphs 19 - 21, EPA covenants not to sue Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs and Future Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by paragraphs 4, 5, 8, 9 and 13. This covenant not to sue is conditioned upon the satisfactory performance of Respondents of their obligations under this Order. This covenant not to sue extends only to Respondents and does not extend to any other person.

19. The covenant not to sue by EPA set forth in paragraph 18 does not pertain to any matters other than those expressly identified therein. Nothing in this Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any Respondent for:

a. any liability as a result of failure to make the payments required by Paragraphs 4 and 5 of this Order or other failure to comply with terms of this Order; or

b. any liability not expressly included in Paragraph 15 above, including, without limitation any liability for i) injunctive relief at the Site; ii) response costs other

than those specifically described under Paragraphs 4 and 5 above; iii) damages for injury to or loss or destruction of natural resources; or iv) criminal liability.

20. Nothing in this Order is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Order.

21. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Order. Nothing in this order is intended to be nor shall be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Order. EPA and Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. Each Respondent agrees not to assert any claims or causes of action against the United States or the Hazardous Substance Superfund arising out of response activities undertaken at, or relating in any way to, the Site, or to seek any other costs, damages, or attorney's fees from the United States, its agencies, employees or contractors arising out of response activities undertaken at, or relating in any way to, the Site. Each Respondent waives any right it might have to seek reimbursement from EPA pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, for any costs pertaining to the Site. The aforementioned agreement and waiver includes, but is not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Section 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Past or Future Response Costs were incurred; and



c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past or Future Response Costs.

23. Each Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Order, it will notify EPA in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Order, it will notify EPA in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Order.

24. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceedings were or should have been brought in the instant case; provided, however, that nothing in this paragraph affects the enforceability of the covenant not to sue by EPA set forth in paragraph 18.

25. Nothing in this Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

26. With regard to claims for contribution against Respondents for matters addressed in this Order, the parties hereto agree that Respondents are entitled, as of the effective date of this Order, to such protection from contribution actions or claims as is provided in Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4).

27. EPA and Respondents agree that the actions undertaken by Respondents by in accordance with this Order do not constitute an admission of any liability by any Respondents. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the facts or allegations contained in this

Order.

28. For a period of ten (10) years following the date upon which EPA provides notice to Respondents that response activities at the Site has been completed, each Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, including the documents in the possession or control of its contractors and agents that relate in any manner to response actions taken at the Site or to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. At the conclusion of this document retention period, Respondents shall notify the United States at least ninety (90) calendar days prior to the destruction of any such records or documents, and upon request by the United States, Respondents shall deliver any such records or documents to EPA.

29. By signing this Order, Respondents certify individually that to the best of their knowledge and belief, each has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, agents, contractors, subcontractors and any person familiar with the information, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal or a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability with regard to the Site since the date of notification of potential liability by the United States or the State and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

c. agreed not to dispose of any such documents without prior approval by EPA, and to deliver, upon EPA's request and at no cost to EPA, the documents or copies of the documents to EPA.

30. Whenever, under the terms of this Order, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their

successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Order with respect to EPA and Respondents.

As to EPA:

Ellen Manges  
Mail Code SFD-7-2  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

and

Letitia Moore, Esq.  
Mail Code ORC-3  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105

As to Respondents:

Harry M. Anthony  
JASCO Chemical Corporation  
P.O. Box J  
Mountain View, California 94042


31. This Order and any appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

32. This Order shall be subject to a thirty-day public comment period pursuant to Section 122(i) of CERCLA. In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Order if comments received disclose facts or considerations which indicate that this Order is inappropriate, improper or inadequate.

33. The effective date of this Order shall be the date upon which EPA issues written notice to the Respondent that the public comment period pursuant to Paragraph 32 of this Order has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Order.

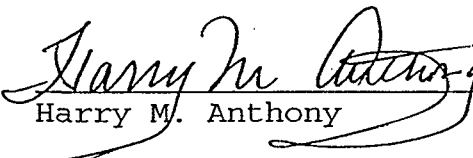
THE UNDERSIGNED CONSENTS TO THIS ORDER in the matter of U.S. EPA  
Region IX CERCLA Docket No. **2000-11**, relating to the Jasco  
Chemical Superfund Site, Mountain View, California:

JASCO Chemical Corporation

By:   
Harry M. Anthony, President

8/1/00  
Date

Harry M. Anthony

By:   
Harry M. Anthony

8/1/00  
Date

Carol Jean Anthony


By:   
Carol Jean Anthony

7-31-00  
Date

The above being agreed and consented to, IT IS SO ORDERED

this 12<sup>th</sup> day of September, 2000.

U.S. Environmental Protection Agency

By:   
John Kemmerer, Branch Chief  
Superfund Division  
USEPA, Region IX

EPA Counsel:

Letitia D. Moore  
Assistant Regional Counsel, (ORC-3)  
(415) 744-1358

1 RECORDING REQUESTED BY:

2 U.S. Environmental  
3 Protection Agency, Region IX

FOR OPTIONAL USE BY  
RECORDING OFFICE

4 AND WHEN RELEASED MAIL TO:

5 Letitia D. Moore  
6 Assistant Regional Counsel  
7 U.S. Environmental  
8 Protection Agency, Region IX  
9 75 Hawthorne Street  
10 San Francisco, CA 94105

11 CERTIFICATE OF RELEASE  
12 OF LIEN UNDER SECTION 107(1) OF THE  
13 COMPREHENSIVE ENVIRONMENTAL RESPONSE,  
14 COMPENSATION & LIABILITY ACT (CERCLA)  
15 42 U.S.C. § 9607(1)

16 LIEN NO. 9921020 DATE FILED: 21 NOV 1988

17 SANTA CLARA COUNTY, STATE OF CALIFORNIA

18 The lien for costs and damages provided by Section 107 of CERCLA  
19 for which Jasco Chemical Company, Harry M. Anthony, and Carol Jean  
20 Anthony are liable to the United States under 42 U.S.C. § 9607 is  
21 hereby released. This Certificate of Release authorizes the proper  
22 officer in the office where the Notice of Lien No. 9921020 was filed  
23 on 21 November 1988, to note in the records to show the release of  
24 this lien for those costs and damages.

25 Dated at San Francisco, California, this 11<sup>th</sup> day of September,  
26 2000.

27 UNITED STATES OF AMERICA  
28 UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Nancy J. Marvel  
Nancy J. Marvel  
Regional Counsel  
U.S. Environmental Protection  
Agency, Region IX